

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MISSOURI PRIMATE FOUNDATION,)
CONNIE BRAUN CASEY, individually,)
ANDREW SAWYER, individually,)
and JANE DOE 2,)

Plaintiffs,)

vs.)

No. 4:16-cv-02163

PEOPLE FOR THE ETHICAL)
TREATMENT OF ANIMALS, INC. and)
ANGELA SCOTT a/k/a ANGELA)
G. CAGNASSO, individually,)

Defendants.)

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

In further support of its argument that Plaintiffs have authority to bring this declaratory judgment and injunction action, Plaintiffs cite to the Court *Bennett v. Spear*, 520 U.S. 154 (1997). In *Bennett*, two irrigation districts and two ranches receiving water from a reclamation project brought suit against federal agencies for over-enforcement of the ESA. The United States Supreme Court analyzed the civil suit provision in the ESA to conclude that it was very broad. The first operative portion of the provision states that "any person may commence a civil suit;" the Court noted this was "an authorization of remarkable breadth when compared with the language Congress ordinarily uses." *Id.* at 165. The Court recognized that the clear statutory language of the ESA states the intent to permit enforcement by "everyman." *Id.* at 166. The Court also acknowledged that the plaintiffs sought to prevent application of environmental restrictions rather than to implement them; however, the "any person" formulation applied to all causes of action authorized by 16 U.S.C. § 1540(g). (*Id.*), so this was a difference without

distinction. In present case before this Court, Plaintiffs affirmatively sued under 16 U.S.C. § 1540(g)(5) to stop alleged enforcement under the ESA. Accordingly, Plaintiffs contend that the wide breadth of the ESA, as acknowledged by the United States Supreme Court, allows them to file their instant case for declaratory and injunctive relief.

CONCLUSION

WHEREFORE, Plaintiffs again respectfully request that this Court deny Defendants' motion to dismiss, and grant such other and further relief that this Court deems just and proper.

Date: March 27, 2017

Respectfully submitted,

GOLDBERG SEGALLA LLP

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2017, I electronically filed the foregoing United States District Court – Eastern District of Missouri by using the CM/ECF system.

/s/ Kurtis B. Reeg